

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 7, 2003

To: The Commission
(Meeting of May 8, 2003)

From: Alan LoFaso
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 428 (Richman and Canciamilla)** - Electrical corporations:
core supply portfolio: core bundled customers.

As Amended April 23, 2003

Legislative Subcommittee Recommendation: Support, if amended.

Summary: This bill would limit electrical corporations' (ECs) obligation to serve customers to core bundled customers, defined as electrical customers with a maximum peak demand of less than 500 kilowatts, and would require non-core customers to contract for their own electrical service by January 1, 2006. The Commission would also be required to adopt rules to enable core residential customers to undergo direct transactions by January 1, 2006 and core non-residential customers to undergo direct transactions by January 1, 2012.

Digest: Existing law, requires the Commission to authorize direct transactions between electricity suppliers and end use customers, subject to a non-bypassable charge. Existing law requires the Commission to suspend direct transactions as specified. Pursuant to this statute the Commission suspended direct access beginning on September 20, 2001 in D.01-09-060, and reaffirmed its decision in D.01-10-036.

Existing law authorizes the Department of Water Resources (DWR) to recover costs incurred in connection with electric power purchases and transmission, scheduling and other related expenses.

This bill would effectively lift the suspension on direct access transactions.

This bill would on January 1, 2006, end an EC's obligation to procure electricity for "non-core customers," defined as retail end-use customers with a maximum peak demand of 500 kilowatts (kW) or greater. Customers receiving power via direct access (DA) on January 1, 2006, would be deemed non-core customers.

These customers would be required to serve their electricity needs either from direct transactions or ECs according to specified terms.

This bill would expand the number of non-core customers by requiring the Commission to reduce the maximum peak demand threshold – the point at which a bundled customer becomes a non-core customer – beginning January 1, 2009, so that following load would be deemed non-core:

- (a) All growth in electricity demand forecasted by the Energy Commission (CEC) during the following five-year period.
- (b) Any reduction in the aggregate supply of electricity provided by DWR contracts.

This bill would require the Commission to complete a proceeding by December 31, 2007, to reduce the threshold “in sufficient amounts” to fulfill the requirements above, until the threshold for non-core customers is reduced to 250 kW.

Additionally, this bill would require the Commission to:

- Adopt rules to allow bundled core customers to elect to be served by direct transactions, and that account for certain costs by January 1, 2006, for residential customers, subject to specified cost responsibility charges, and January 1, 2012 for nonresidential customers, subject to specified cost responsibility surcharges.
- Adopt regulatory criteria by January 1, 2005 for the “composition of a core portfolio of electricity supplies to be established by each electrical corporation” that:
 - (a) Meets the needs of the electrical corporation’s bundled core customers.
 - (b) Provides for an adequate reserve capacity.
 - (c) Includes a minimum renewable energy component.
 - (d) Incorporates demand-side management programs.
- Establish the appropriate mix and level of long-, medium-, and short-term EC procurement obligations, pursuant to the Commission’s current procurement proceeding, according to the requirements of AB 57.
- Adopt rules to:
 - Protect core customers from cost shifting resulting from DA, customer departure to publicly-owned utility (POU), undercollection of utility costs of service, and DWR costs to former core customers. (Cost responsibility would incorporate the same elements required of community aggregators, pursuant to P.U. Code sec. 366.1.
 - Ensure that non-core customers are not responsible for future costs incurred by ECs or DWR to serve the core portfolio.
 - Develop terms and conditions for non-core customers to continue to be served by ECs. (These service arrangements would require a one-year minimum.)

This bill would require ECs to:

- Serve their remaining bundled customers from a core portfolio consisting of:
 - (a) Output from utility retained generation.
 - (b) Electricity available pursuant to DWR contracts and allocated to core customers.
 - (c) Other EC contracted electrical supplies.
 - (d) Spot market power purchases needed to serve core customers.

Analysis: AB 428 would effectively lift the suspension of direct access transactions for customers deemed “non-core.” Ultimately, the bill would mandate the restoration for “core” customers also.

The Commission considered a core/non-core option only after substantial study of that and other options. (See D.92-09-088 and *California’s Electric Services Industry: Perspectives on the Past, Strategies for the Future* (CPUC/DSP, February 1993) (“the Yellow Book”).)

Several important questions must be addressed before committing to a “core/non-core” policy at this time. A “core/non-core” policy carries great potential to harness the most beneficial elements of market forces and traditional regulation. However, implementing this policy requires the Commission to sort out many issues associated with the suspension of direct access mandated in AB 1X. These issues are being considered in the Commission’s rulemaking implementing the suspension of direct access (R. 02-01-011). This proceeding is reviewing many issues necessary to be resolved before the restoration of direct access, such as the impact on bundled customers and the time necessary to repay costs incurred during 2001.

Meanwhile, the Commission is implementing several new statutes enacted in 2002 that provide the basis of a post-energy crisis structure for regulating public utilities. The most significant of these are AB 57, which enacted a statutory framework for investor-owned utility (IOU) procurement; SB 1038 and SB 1078, which enacted the renewables portfolio standard (RPS); and AB 117, which affirmed the Commission’s authority to determine the “fair share” of cost responsibility to be borne by direct access customers served by DWR purchases prior to the suspension of direct access.

Several implementation issues raised in these statutes must also be resolved before the state embarks on a significant revision of the retail market. Most significant of these is assisting the utilities in planning procurement for an identifiable customer base, the CRS proceeding, and the applicability of the RPS to competitive retail providers and customers.

AB 428 leaves unanswered several important questions being addressed by the Commission now. These are being addressed in the CRS proceeding (R. 02-01-011) and the procurement rulemaking (R. 01-10-024). In the later proceeding, the Commission is overseeing short-, medium-, and long-term procurement for utilities and

fulfilling its direction under SB 1078 to develop a means to implement the RPS in the competitive retail market.

Finally, it may be premature to require substantial end-users of electricity to procure from the wholesale market without more a specific determination of how resource planning will occur for non-core customers.

Many of the goals of AB 428 are consistent with efforts the Commission is undertaking with sister agencies, the CEC and the CPA, to develop and implement the Energy Action Plan (EAP). The plan's goal is to ensure that adequate, reliable, and reasonably priced electrical power and natural gas supplies, including prudent reserves, are achieved and provided through policies, strategies, and actions that are cost-effective and environmentally sound for California's consumers and taxpayers.

As AB 428 seeks to accomplish, the EAP incorporates market-based approaches to addressing the state's energy needs. The EAP recognizes the state's current hybrid energy market and that state policies can capture the best features of a vigorous, competitive wholesale energy market and renewed, positive regulation. Moreover, the EAP intends to send a signal to the market that investments in new infrastructure will be rewarded.

The EAP specifically commits to goals that address the state's energy needs in the near future with energy efficiency and demand reduction, as well as new generation to meet anticipated load growth. Providing an environment to encourage investment in new generation is a specific policy goal of the authors in proposing AB 428. The EAP is specifically directed toward this goal.

As the EAP works within the current hybrid market, it poses the best chance of achieving these goals with minimal uncertainty. Moreover, the EAP's demand reduction and renewables goals stand the best chance of being accomplished in the near term without substantial change in the retail market.

The core/non-core model is, in the long term, a viable structure that warrants further study and consideration by the Commission. OGA recommends that the Commission work with the author(s) to offer Commission resources to study this potential restructuring option. Amendments would need to reflect the issues raised here that need to be addressed before a final "core/non-core" model is adopted.

RELATED LEGISLATION

- AB 816 (Reyes) would lift the current suspension on direct access transactions.
- SB 888 (Dunn, et.al.) would repeal substantial portions of the AB 1890 of 1996 including direct access transactions.

Legislative History:

Assembly U&C: 11-0 (do pass) (4/28/03)

SUPPORT/OPPOSITION

Support: California Business Properties Association, California State University, Sempra (support if amended), PG&E (support if amended), Alliance for Retail Energy Markets (support if amended), California Manufacturers & Technology Association (support if amended).

Opposition: California Coalition of Utility Employees (CUE), Association of California Water Agencies.

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Date: May 7, 2003

BILL LANGUAGE:

BILL NUMBER: AB 428 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 23, 2003

INTRODUCED BY Assembly ~~Member Richman~~
Members Richman and Canciamilla

FEBRUARY 14, 2003

An act to add Section 367.6 to the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 428, as amended, Richman. Electrical corporations: core supply portfolio: core bundled customers.

(1) Under existing law, the Public Utilities Commission regulates electrical corporations. The Public Utilities Act requires the commission to authorize direct transactions between electricity suppliers and end use customers. However, other existing law suspends the right of retail end use customers to acquire direct access service from certain electricity suppliers after a period of time to be determined by the commission until the Department of Water Resources no longer supplies electricity under a certain provision of law.

This bill would delete that suspension.

The bill would require the commission, on or before January 1, ~~2006~~ 2005, to adopt ~~guidelines~~ regulatory criteria for the appropriate and reasonable composition of a core portfolio of electricity supplies to be established by each electrical corporation to meet the needs of the electrical corporation's bundled core customers, as defined, *noncore customers electing to remain with the electrical corporation for at least one year*, and to provide an adequate reserve capacity. Under the bill, commencing January 1, 2006, an ~~electric~~ electrical corporation would have no obligation to ~~serve~~ procure electric commodity for a noncore customer, as defined, except by contract for a term of no less than ~~3~~ 1 ~~years~~ year

and on terms approved by the commission that reimburse the electrical corporation for all costs of providing electrical service.

Commencing on that date, noncore customers ~~would~~ could not be served from the core portfolio, except as specified, and would be served either by direct transactions or by contract with an electrical corporation. The bill would require the commission, on or before January 1, 2006, to adopt rules to allow residential bundled core customers to elect to be served by direct transactions in a manner that fully ~~accounts for~~ their cost of service by the electrical corporation and payments for a proportionate share of system costs, bond payments, and public benefits charges. *compensates the electrical corporation and the Department of Water Resources for the customers' proportionate share of specified categories of costs.*

The bill would also require the commission to adopt rules to ensure that the returning residential bundled core customers are charged the full costs incurred by the electrical corporation to provide them with electric commodity procurement service, including a minimum one year contractual obligation to take bundled electric service from the electrical corporation, unless the customer leaves the electrical corporation's service territory. The bill would require the commission to adopt corresponding rules for nonresidential bundled core customers on or before January 1, 2012. Because a violation of a rule or order of the commission is a crime, this bill would create a new crime, thereby imposing a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to ~~provide~~ do all of the following:

(a) Establish a market structure in which the electrical corporations have an obligation to provide bundled electric commodity procurement service only to core retail end-use customers.

(b) Allow noncore retail end-use customers to elect to have their electricity commodity procured by the electrical corporations for a fixed term at rates that fully compensate the electrical corporations for the incremental costs of procuring the commodity.

(c) Require the electrical corporations to serve as a default provider of electric commodity procurement service to noncore retail end-use customers that voluntarily or involuntarily return to the electrical corporation for that service.

(d) Provide a market structure for the construction of electric generation capacity to meet the needs of a growing state and replace this state's most polluting and inefficient ~~generation plants by phasing in a retail~~ electric generation plants by phasing in a competitive retail electric commodity market for the largest, most financially stable ~~customers~~ retail end-use customers of the electrical corporation.

(e) Ensure the protection of core retail end-use customers against payment of stranded costs by requiring departing customers to pay for power and other services provided on their behalf by the state and the electrical corporations .

SEC. 2. Section 367.6 is added to the Public Utilities Code, to read:

367.6. (a) As used in this section, the following terms have the following meanings:

(1) "Bundled core customers" include all ~~customers~~ retail end-use customers of an electrical corporation with a maximum peak demand of less than 500 kilowatts, or a maximum peak demand as determined by the commission pursuant to subdivision (b), who are not being served, or who elect not to be served, through direct transactions.

(2) "Noncore customers" include all ~~customers~~ retail end-use customers of an electrical corporation with a maximum peak demand of 500 kilowatts or greater, or a maximum peak demand as determined by the commission pursuant to subdivision (b).

For the purposes of this section, noncore customers may aggregate their peak demand from multiple meters located anywhere in an electrical corporation's service territory. Customers receiving service from electricity suppliers on January 1, 2006, shall be considered noncore customers, except any customers exempt from any direct access surcharge paid by other noncore customers, shall retain that exemption until the time they return to bundled utility service.

(b) Commencing January 1, ~~2008, and every two years thereafter,~~ 2009, the commission shall reduce the maximum peak demand threshold ~~by an amount sufficient to convert~~ for defining noncore customers in subdivision (a), by converting the bundled core customers with the largest peak demand prior to reduction of the threshold to noncore customers, ~~who shall contract for electricity service from third parties or an electric corporation to~~ in sufficient amounts, so that the forecast load attributable to converted customers is forecast to meet all growth in electricity demand forecasted by the State Energy Resources Conservation and Development Commission during the following five-year period and any reduction in the aggregate supply of electricity provided by Department of Water Resources contracts pursuant to Division 27 (commencing with Section 80000) of the Water Code. The commission shall complete its proceeding in this matter no later than December 31, 2007, and may not lower the threshold beyond ~~100~~ 250 kilowatts maximum peak demand.

(c) On or before January 1, ~~2006~~ 2005, the commission shall adopt ~~guidelines for the appropriate~~ regulatory criteria for the appropriate and reasonable composition of a core portfolio of electricity supplies to be established by each electrical corporation to meet the needs of the electrical corporation's bundled core customers ~~and~~ and noncore customers electing to remain with the electrical corporation for at least one year pursuant to subdivision (e) and to provide an adequate reserve capacity. The commission shall include a minimum renewable energy component and demand-side management programs, including, but not limited to, time-of-use rates and reserve requirements ~~established by the State Energy Resources Conservation and Development Commission.~~ consistent with existing law.

(d) (1) The core supply portfolio shall also include the following components:

(A) Output of the generation assets retained by the electrical corporation under commission regulation.

(B) The total amount of Department of Water Resources contract electricity purchased ~~to supply bundled customers~~ pursuant to Division 27 (commencing with Section 80000) of the Water Code and allocated to the core customers of the electrical corporation.

(C) Other supplies purchased by the electrical corporation under contracts to serve the needs of its core customers.

(D) Any spot market supplies required to ~~provide for core demand~~ serve core customers.

~~(2) The commission shall ensure that noncore customers are~~

~~responsible for an appropriate amount of the costs of the Department of Water Resources contracts to the extent those costs exceed the average cost of the remaining supply components of the core supply portfolio.~~

(2) The commission shall adopt rules that protect the core customer of an electrical corporation from cost shifting resulting from direct transactions, customers who depart the electrical corporation's system in order to be served by a competing publicly owned utility, or undercollections of utility costs of service or costs incurred by the Department of Water Resources to serve customers who are no longer core customers. These rules shall ensure that a retail end-use customer purchasing electricity from another electric service provider or electricity supplier shall reimburse the electrical corporation that previously served that customer, or had the obligation to serve that customer, on a nonbypassable basis for the categories of costs described in subdivisions (d), (e), (f), and (g) of Section 366.1.

(3) The commission shall ensure that no customer moving from core to noncore will have any obligation for any future costs incurred by the electrical corporation or Department of Water Resources associated with the core supply portfolio that are not recovered from core customers, and that costs of the core supply portfolio shall be recoverable only from core customers and noncore customers served by electrical corporations as described in subdivision (e).

(e) Commencing January 1, 2006, an ~~electric~~ electrical corporation has no obligation to ~~serve~~ procure electric commodity for any noncore customer except by contract for a term of not less than ~~three~~ one years and on terms approved by the commission that reimburse the electrical corporation for all costs of providing electrical service. On or before January 1, 2005, the commission shall adopt rules, as it deems necessary to establish a nondiscriminatory tariff for noncore customers. These rules shall include all of the following:

(1) A time certain, no later than July 1, 2005, by which a noncore customer currently receiving electric commodity procurement service from the electrical corporation shall either elect to be served by an electricity supplier other than the electrical corporation or agree to be served by the electrical corporation for a minimum of one year.

Noncore customers electing to remain with the electrical corporation on or before July 1, 2005, may be served from the core customer portfolio described in paragraph (1) of subdivision (d).

(2) Notice requirements of not less than six months for noncore customers to provide notice to their electrical corporation and the Department of Water Resources of their intent to obtain service from an electricity supplier other than the electrical corporation or voluntarily contract with the electrical corporation for bundled noncore electric commodity procurement service pursuant to this subdivision.

(3) Provisions for ensuring prompt and full recovery of costs that the electrical corporation and Department of Water Resources have incurred to serve customers pursuant to paragraph (2) of subdivision (d) and in meeting the obligation to serve. Rates and tariffs that require noncore customers who choose to return to bundled utility electric commodity procurement service to pay the actual costs incurred by the electrical corporation to procure electric commodity for that returning customer on a basis separately tariffed from the costs of the noncore portfolio of the electrical corporation for a period of not less than one year or the tariffed rate under this

section, whichever is higher.

(f) Commencing January 1, 2006, noncore customers may not be served from the core portfolio, except as provided in paragraph (1) of subdivision (e). Noncore customers shall be served by direct transactions, as described in Section 365, or by contract with an electrical corporation as described in subdivision ~~(e)~~. ~~Customers may aggregate their load at multiple locations in order to be classified as noncore customers. Any noncore customer who elects to remain with, or return to, service from its electrical corporation rather than engage in direct transactions shall provide the electrical corporation at least 18 months' advance written notice of that election.~~ (e). In coordination with the resource planning and procurement process defined in Section 454.5, the commission shall annually establish the appropriate mix and level of long-term, medium-term, and short-term resource commitments to be made by the electrical corporation consistent with the utility procurement obligations defined in this section.

(g) (1) On or before January 1, 2006, the commission shall adopt rules to allow residential bundled core customers to elect to be served by direct transactions in a manner that fully ~~accounts for their cost of service by the electrical corporation and payments for a proportionate share of system costs, bond payments, and public benefits charges.~~ compensates the electrical corporation and the Department of Water Resources for the customers' proportionate share of the categories of costs described in subdivisions (d), (e), (f), and (g) of Section 366.1. The commission shall also adopt rules to address the return of those residential bundled core customers being served by direct transactions to bundled service that ensure that the returning customers are charged the full costs incurred by the electrical corporation to provide them with electric commodity procurement service, including a minimum one year contractual obligation to take bundled electric service from the electrical corporation, unless the customer leaves the electrical corporation's service territory.

(2) On or before January 1, 2012, the commission shall adopt rules to allow nonresidential bundled core customers to elect to be served by direct transactions in a manner that fully ~~accounts for their cost of service by the electrical corporation and payments for a proportionate share of system costs, bond payments, and public benefits charges.~~ compensates the electrical corporation and the Department of Water Resources for the customers' proportionate share of the categories of costs described in subdivisions (d), (e), (f), and (g) of Section 366.1. The commission shall also adopt rules to address the return of those nonresidential bundled core customers being served by direct transactions to bundled service that ensure that the returning customers are charged the full costs incurred by the electrical corporation to provide them with electric commodity procurement service, including a minimum one year obligation to take bundled electric service from the electrical corporation, unless the customer leaves the electrical corporation's service territory.

(h) A noncore customer shall not be responsible for any new transition costs or procurement-related obligations incurred on behalf of the core portfolio during the period when the customer is served by direct transactions, except to the extent that the costs were incurred during the period when the noncore customer had elected to receive core portfolio service pursuant to paragraph (1) of subdivision (e) and the costs cover the actual cost of electricity

used by the customer.

SEC. 3. Section 80110 of the Water Code is amended to read:

80110. The department shall retain title to all power sold by it to the retail end use customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate.

~~Such~~ Those revenue requirements may also include any advances made to the department hereunder or hereafter for purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001. For purposes of this division and except as otherwise provided in this section, the commission's authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. The commission may enter into an agreement with the department with respect to charges under Section 451 for purposes of this division, and that agreement shall have the force and effect of a financing order adopted in accordance with Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, as determined by the commission. In no case shall the commission increase the electricity charges in effect on February 1, 2001 for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division. The department shall have the same rights with respect to the payment by retail end use customers for power sold by the department as do providers of power to ~~such~~ those customers.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.